

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 7-01-10779-SA  
Chapter 7

Debtor.

**ORDER APPROVING SETTLEMENT OF TRUSTEE'S COLLECTION OF THE DEFAULT  
JUDGMENT ENTERED IN ADVERSARY PROCEEDING 03-1133 M**

THIS MATTER came before the Court on the Chapter 7 Trustee's Motion to Approve Settlement of Adversary Trustee's Collection of the Default Judgment Entered in Adversary Proceeding 03-1133 (doc. #2465) (the "Motion"). Having reviewed the Motion, and being otherwise advised in the matter, the Court FINDS:

A. On February 8, 2001 (the "Petition Date"), Furr's Supermarkets, Inc. (the "Debtor") filed a voluntary petition in this Court under Chapter 11 of the Bankruptcy Code. On December 19, 2001, this Court entered an order converting the chapter 11 case to a case under chapter 7. On that date the Trustee was appointed as the trustee for the Debtor's bankruptcy estate, in which capacity she continues to serve.

B. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 157 and § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. § 1408 and § 1409.

C. In Adv. Pro. No. 03-1133 (the "Preference Action"), the Trustee sought to recover \$35,424.90 from Banc of America Vendor

Finance, Inc. (the "Preference Defendant"), plus all other amounts, if any, recoverable pursuant to 11 U.S.C. § 547.

D. The Preference Defendant did not answer the complaint in the Preference Action, and the Court entered a default judgment in the amount of \$35,574.90 (the "Default Judgment").

E. The Preference Defendant believes it has grounds to seek to set aside the Default Judgment. The Trustee believes that the Default Judgment was properly entered and would not be set aside.

F. Preference Defendant has offered to pay the Trustee \$28,000 in full satisfaction of the Default Judgment (the "Settlement"). Upon payment of this amount, the Defendant will have an allowed general unsecured claim in this amount, in addition to any claim already existing and filed by Defendant. The settlement also includes the Trustee's release of any other avoidance claims against the Defendant and its predecessors and successors in interest. In consideration of the Settlement, upon the entry of a final non-appealable order granting the Motion and approving the Settlement, the Preference Action shall be dismissed with prejudice and the parties will execute a settlement and release agreement in the form attached to the Motion as Exhibit A (the "Settlement Agreement").

G. On August 9, 2004, amended notice of the Motion (docket #2468) (the "Amended Notice") was mailed by first class United States mail, postage prepaid, to all persons on the limited

mailing matrix maintained in the bankruptcy case, as shown by the certificate of service on the Amended Notice filed with the Court;

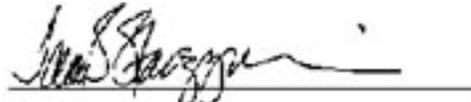
H. The Amended Notice provided for a deadline to object to the Motion of September 2, 2004, which was 23 days after the date of mailing of the Amended Notice. The Amended Notice was sufficient and appropriate in the particular circumstances;

I. The deadline to object to the Motion has expired, and no objections to the Motion were filed;

J. The requirements of the Bankruptcy Code and Rules, including Rule 9019, have been satisfied with respect to the relief granted by this Order. The proposed settlement is fair and equitable, and in the best interests of and beneficial to the Debtor's estate and the creditors; and,

K. Entry of this Order, without further notice or hearing, is appropriate.

THE COURT THEREFORE ORDERS that the Motion is approved. Preference Defendant shall pay the Trustee the Settlement Amount, and the parties shall execute and perform under the Settlement Agreement.



JAMES S. STARZYNSKI  
United States Bankruptcy Judge

Submitted and Approved:  
JACOBVITZ, THUMA & WALKER, P.C.

By: submitted by e-mail

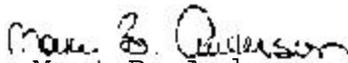
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I hereby certify that on September 30, 2004, a true and correct copy of the foregoing was electronically transmitted, faxed, delivered, or mailed to the listed counsel and/or parties.

  
Mary B. Anderson